U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 07 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner appealed this decision to the Administrative Appeals Office (AAO), and, on January 29, 2013, the AAO dismissed the appeal. The petitioner filed an appeal of the AAO's decision. The appeal will be dismissed pursuant to 8 C.F.R. §§ 103.3(a)(1)(ii), 103.5(a)(1)(i), 103.5(a)(3), and 103.5(a)(4).

United States Citizenship and Immigration Services (USCIS) regulations provide for appeals of unfavorable decisions. *See* 8 C.F.R. §§ 103.3(a)(1)(ii), 103.3(a)(1)(iv) (defining the jurisdiction of the Board of Immigrations Appeals and the AAO, respectively). The AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1 (effective March 1, 2003). An appeal of an AAO appeal is not properly within the AAO's jurisdiction.

USCIS regulations permit a petitioner to request that a decision by the AAO be reopened and reconsidered. 8 C.F.R. § 103.5(a). Motions to reopen or reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). The petitioner's brief and any evidence must be filed within 30 days of the underlying decision. *Id.* There is no provision in the statute or regulations permitting the AAO to extend that deadline. *Cf.* 8 C.F.R. § 103.3(a)(2)(vii) (permitting the AAO to allow, for good cause shown, additional time to submit a brief).

In this matter, the AAO dismissed the petitioner's appeal on January 29, 2013. On February 25, 2013, counsel for the petitioner submitted Form I-290B, Notice of Appeal or Motion, noting that it was "filing an appeal" by checking box "B" in Part 2 of that form. Part 2 of the Form is titled as "Appeal for [the beneficiary]." Part 3 of the form, "Basis for the Appeal or Motion," contains only one sentence, which reads, "Brief and Supporting documents will be submitted to the AAO within 30 days." The form is signed by the petitioner's president. Form I-290B was accompanied by a Form G-28, Notice of Entry of Appearance as Attorney, as well as a letter from counsel, dated February 22, 2013. Counsel's letter states in pertinent part:

> The Administrative Appeals Office (NSC) denied the I-140 petition on January 29, 2013. At this time we are submitting a request to appeal the decision. The petitioner is currently gathering additional evidence to address the concerns of the AAO. We are now submitting our request for an appeal and the supporting documents will be submitted to the AAO within 30 days.

On March 28, 2013, 31 days after the AAO's decision, counsel for the petitioner submitted its brief and supporting documents.[1]

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[1] In its appeal, the petitioner has submitted a brief and provided copies of the AAO decision, two credentials evaluation reports already submitted, information from the [redacted] a letter from the [redacted] information on [redacted] the beneficiary's undergraduate diploma and transcript, and the ETA Form

The appeal shall be dismissed for failing to meet applicable requirements. As no appeal lies from the AAO's decision, and as the petitioner's filing does not meet the requirements for a motion to reopen or a motion to reconsider, it must be dismissed. A motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for USCIS to grant an extension to the petitioner to file evidence or arguments in the future. The fact that the petitioner on the Form I-290B incorrectly checked box B ("I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days"), does not permit the petitioner to submit evidence beyond the 30 day period allowed for motions to reopen or reconsider. 8 C.F.R. § 103.5(a)(1)(i).

The AAO notes that, even if the petitioner had properly submitted a motion within the time permitted by regulation, the brief and evidence provided as of March 28, 2013, would be insufficient to grant the motion. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel's brief does not state new facts, therefore, it would not meet the requirements for a motion to reopen.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the AAO noted in its January 29, 2013 decision, the beneficiary's degree from [redacted] California, though called a "Master of Science in International Business," does not qualify as a U.S. master's degree under the "advanced degree" definition of 8 C.F.R. § 204.5(k)(2) because it was not awarded by an educational institution that has been accredited by a regional accrediting agency recognized by the Department of Education and Council for Higher Education Accreditation. The AAO also noted that the beneficiary does not have a foreign educational equivalent to a master's degree in business administration or international business.

In his brief, counsel contends that the beneficiary has a Master's Degree in International Business from [redacted]; the position offered requires a Master's Degree in Business Administration or International Business; 8 C.F.R. § 204.5(k) does not explicitly state that a degree must be from an accredited college or university to qualify as an "advanced degree" rather it requires that that the degree be above that of a baccalaureate; the AAO states that the modifier "United States" to describe the different levels of degrees makes clear the intention of the rule makers that the regulations apply to degrees issued by U.S. education institutions that are recognized and honored on a nationwide basis; the use of the modifier "United States" to describe the degree is referring to non-foreign degrees as opposed to foreign degrees; the modifier "United States" must not bear further meaning in regard to the accreditation of the universities in question; [redacted] is a United States university; federal and state descriptions of approval requirements for accreditation are similar; USCIS may not consider the quality of the beneficiary's

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9089 with approval letter. All of these documents were already submitted. The only new submission in the petitioner's second appeal is counsel's brief.

education as a requirement of a labor certification and visa petition; and is authorized to issue I-20 Forms for F-1 student visas, therefore USCIS should be estopped from rejecting the beneficiary's degree as it has accepted the same university for other visa applications.

Counsel does not cite to any precedent decisions in any of the foregoing claims, and his contentions are not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. As such, the petitioner's second appeal would not meet the requirements for a motion to reconsider.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current matter, the petitioner has not met that burden. The appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The appeal is dismissed.